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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/616,980	07/11/2003	Lieven Leopold Albertine Trappeniers	Q76440	2865
23373 7590 03/20/2007 SUGHRUE MION, PLLC 2100 PENNSYLVANIA AVENUE, N.W. SUITE 800 WASHINGTON, DC 20037			EXAMINER ISMAIL, SHAWKI SAIF	
			ART UNIT 2155	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		03/20/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/616,980

Applicant(s)

TRAPPENIERS ET AL.

Examiner

Shawki S. Ismail

Art Unit

2155

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>7/11/2003</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED OFFICE ACTION

1. This communication is responsive to the application filed on October 24, 2002.

Claims 1-26 are presented for examination.

Applicant's claim for foreign priority is acknowledged.

References in applicant's IDS form 1449 have been considered.

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1 - 8 and 17-29 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

MPEP 2106 IV.B.2.(b)

A claim that requires one or more acts to be performed defines a process. However, not all processes are statutory under 35 U.S.C. 101. *Schrader*, 22 F.3d at 296, 30 USPQ2d at 1460. To be statutory, a claimed computer-related process must either: (A) result in a physical transformation outside the computer for which a practical application in the technological arts is either disclosed in the specification or would have been known to a skilled artisan, or (B) be limited to a practical application within the technological arts.

Claims 1-10, in view of the above cited MPEP sections, are not statutory because they merely recite a number of computing steps without producing any tangible result and/or being limited to a practical application within the technological arts. The use of a computer has not been indicated.

"TANGIBLE RESULT"

The tangible requirement does not necessarily mean that a claim must either be tied to a particular machine or apparatus or must operate to change articles or materials

to a different state or thing. However, the tangible requirement does require that the claim must recite more than a § 101 judicial exception, in that the process claim must set forth a practical application of that § 101 judicial exception to produce a real-world result. Benson, 409 U.S. at 71-72, 175 USPQ at 676-77 (invention ineligible because had "no substantial practical application."). "[A]n application of a law of nature or mathematical formula to a ... process may well be deserving of patent protection." Diehr, 450 U.S. at 187, 209 USPQ at 8 (emphasis added); see also Corning, 56 U.S. (15 How.) at 268, 14 L.Ed. 683 .

Claims 1-10, in view of the above cited MPEP sections, are not statutory because the claims do not produce any *tangible results*. The claims merely recite program code for doing a function and does not perform these functions.

Claim Rejections - 35 USC §102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

1. Claims 1-7, 12-24, and 29-34, are rejected under 35 U.S.C. 102(e) as being anticipated by **Manigipudi et al.**, (Hereinafter referred to as Manigipudi) U.S. Patent No. **6,,728,748**.

4. As to claim 1, Manigipudi method for allocating network resources by just-in-time modulation of quality of service (QoS) comprising steps of

- recording QoS demands and resource usage (col. 2, lines 21-45),
- predicting required QoS demands (col. 5, lines 31-50),
- deriving and propagating QoS demands (col. 7, lines 20-55), and
- coordinating concurrent QoS demands of a manifold of users (col. 7, lines 20-55, and col. 10, lines 32-45) ,

wherein recording QoS demand and predicting required QoS demand are based on service-usage and user-behavior acquired by recording events at a client terminal of a user as user-behavior and aggregated in a QoS user profile (col. 7, lines 20-55, and col. 10, lines 32-45 and col. 9, lines 20-44).

5. As to claim 2, Manigipudi teaches the method according to claim 1, wherein the activities are performed with respect to defined QoS user preferences specifying the recording, predicting, deriving and propagating, and coordinating in relation to system conditions (col. 7, lines 20-55, and col. 10, lines 32-45).

6. As to claim 3, Manigipudi teaches the method according to claim 1, wherein said QoS user preferences specify a QoS demanding strategy col. 7, lines 20-55, and col. 10, lines 32-45.

7. As to claim 4, Manigipudi teaches the method according to claim 1, wherein the prediction is realized by a neural network (col. 4, line 66 – col. 5, line 25).

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8. As to claim 5, Manigipudi teaches the method according to claim 1, wherein the coordinating concurrent QoS demands of a manifold of users comprises the steps of evaluating (col. 7, lines 20-55, and col. 10, lines 32-45).

9. Claims 6-10 do not teach or define any new limitation above claims 1-5; therefore, they are rejected for similar reasons.

10. Examiner has cited particular columns and line numbers in the references as applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings of the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant in preparing responses, to fully consider the references in its entirety as potentially teaching of all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shawki S Ismail whose telephone number is 571-272-3985. The examiner can normally be reached on M-F 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Saleh Najjar can be reached at 571-272-4006. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for

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published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).

Shawki Ismail
Patent Examiner
March 10, 2007



SALEH NAJJAR
SUPERVISORY PATENT EXAMINER